

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION

JEFFREY D. MCKINNON

PETITIONER

vs.

Civil Case No. 2:08CV00071 HLJ

T. C. OUTLAW, Warden,
FCI, Forrest City, Arkansas

RESPONDENT

ORDER

Petitioner Jeffrey D. McKinnon is an inmate of the Federal Correctional Institution (FCI) in Forrest City, Arkansas, serving a forty-six month sentence imposed on March 2, 2007, following his guilty plea to one count of conspiracy to commit burglary and four counts of pharmacy burglary in violation of 18 U.S.C. § 2118(b) & (d). Petitioner asserts he has completed a residential drug abuse program (RDAP), but the Bureau of Prisons (BOP) has found that, under a regulation adopted on December 22, 2000, he is not eligible for a sentence reduction under 18 U.S.C. § 3621(e)(2)(B) because he was convicted of a violent crime. He argues under Arrington v. Daniels, 516 F.3d 1106 (8th Cir. 2008), the BOP may not rely on this regulation to deny him access to the early release program because the regulation was not properly promulgated under the Administrative Procedures Act.

At least one court in this District rejected the rationale in Arrington and denied a similar claim in Gatewood v. Outlaw, 2008 WL 2002650 (E.D. Ark. May 8, 2008). Gatewood is now on appeal to the

Eighth Circuit Court of Appeals. The attorney for the petitioner in Gatewood has agreed to represent Petitioner in this case, but Petitioner has not submitted an application to proceed in forma pauperis. An application will be provided to Petitioner. If Petitioner wishes to have counsel appointed to represent him, he must submit the completed application within twenty (20) days. The court will then determine whether he is financially qualified for appointment of counsel under 18 U.S.C. § 3006A.

It is not clear to the court exactly what Petitioner is arguing on the last page of his petition. Respondent interprets his argument to be that he was not convicted of a violent crime. Petitioner is directed to clarify this argument within twenty (20) days.

IT IS THEREFORE ORDERED that Petitioner file a statement within twenty (20) days clarifying his argument on the last page of his petition.

THE CLERK IS DIRECTED to mail to Petitioner an application to proceed in forma pauperis. If Petitioner wishes to have counsel appointed to represent him in this matter, he must submit the completed form within twenty (20) days.

SO ORDERED this 17th day of October, 2008.

Henry L. Jones, Jr.

United States Magistrate Judge